

REMARKS

The Office Action of December 5, 2008, has been carefully considered.

It is initially noted that Claim 27 has now been amended to recite that the oily fluid is a sprayable oily fluid. The recitation of the composition sprayable was previously found in Claim 30, which has been canceled.

Claims 27-39 now stand rejected under 35 USC 103(a) over Desjonquieres, EP 1077061, based on the translation which has been provided with the Office Action. The Office Action takes the position that Desjonquieres teaches a pharmaceutical composition in the form of an oil or milk, a fluid compatible with use as a spray, comprising peroxidized lipids which have a degree of peroxidation of between 5 and 600 meq/kilogram and colloidal silica. While it is admitted that Desjonquieres does not explicitly teach a silica concentration of between 0.5 and 2%, it is alleged that Desjonquieres does teach a composition "containing 2 to 99% peroxidized oils (i.e. 1% or less colloidal silica) and up to 9% colloidal silica (Examples 1-5, claims 9-11)."

Applicant disagrees with this interpretation of the Desjonquieres reference.

This rejection appears to be based on paragraphs [0016] and [0017] of the French text, which have been translated as follows:

[0016] The compositions of the invention can be in any compatible form with topical application to the surface of the mucous membranes of the oral cavity. These compositions will preferably be in the form of an emulsion-type oil-in-water or water-in-oil, a cream, ointment, a milk or a gel, particularly an oily gel-based colloidal silica.

[0017] However, the preferred form of the compositions of the invention is that of an oily gel-based colloidal silica.

First, Applicant notes that the translation itself appears to be in error. The last phrase in each of the two paragraphs should correctly read:

an oily gel based on colloidal silica.

Thus, the Desjonquieres reference does encompass compositions in the form of an emulsion, a cream, an ointment, or a milk. While it is conceivable that an emulsion or a milk would be sprayable, there is actually no disclosure or suggestion of incorporating silica into these compositions.

In fact, the only compositions to which silica would be added according to Desjonquieres is a gel. A gel is a essentially a solid, and would not be sprayable; as disclosed in paragraph [0023], "it will improve the rapid healing of canker sores by applying only to surface a small, pea-sized amount of a composition containing lipid peroxides, preferably a composition in the form of a gel."

In order to be sprayable, the composition must effectively be a fluid, and an amount of a composition as described as "pea-sized" would be a solid and not a fluid. This description of the composition as "pea-sized" is also found in paragraph [0030].

The only use for silica disclosed in Desjonquieres is in the preparation of a gel. In Example 1, the gel contains 9% silica, and in Examples 2-5, there are disclosed gels containing 7% silica.

While it is true that Desjonquieres discloses compositions which can contain up to 99% peroxidized oil, a composition containing 99% peroxidized oils would:

- 1) not be in the form of a gel, and
- 2) would not contain silica, *because the only reason to add silica to the composition is to produce a gel.*

Clearly, the preferred compositions of the Desjonquieres reference are gels. However, in the study described in

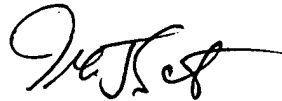
paragraph [0046] of Desjonquieres, a composition is described which is apparently not a gel and which contains 90% peroxidized lipids. No silica is present.

Thus, there is nothing in the Desjonquieres reference which would suggest preparing a peroxidized lipid composition containing silica *which is not a gel*. It is only Applicant who has disclosed a peroxidized lipid composition containing 0.5 to 4% silica and which is sprayable.

Withdrawal of this rejection is requested.

In view of the foregoing amendments and remarks, Applicant submits that the present application is now in condition for allowance. An early allowance of the application with amended claims is earnestly solicited.

Respectfully submitted,



Ira J. Schultz
Registration No. 28666
Attorney for Applicants
(703)837-9600, ext. 23